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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,913	02/06/2001	Hyman M. Schipper	S&B-C048	3680
30132	7590	01/28/2003	EXAMINER	
GEORGE A. LOUD 3137 MOUNT VERNON AVENUE ALEXANDRIA, VA 22305			WINSTON, RANDALL O	
ART UNIT	PAPER NUMBER			
1654	8			
DATE MAILED: 01/28/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/776,913	Applicant(s) Schipper et al.	
	Examiner Randall Winston	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) 9-14 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some* c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>4</u>	6) <input type="checkbox"/> Other: _____

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DETAILED ACTION

Response to Amendment

The amendment/election filed on November 4, 2002 has been entered.

Claims 2-14 are pending.

Claim Objections

Claims 9-14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. (i.e., see, 102 explanation below of what applicant claims)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102 (b) as being anticipated by Schipper HM, et al. (1997). Blood Heme Oxygenase-1 Levels are Decreased in Alzheimer Disease, Soc. Neuroscience 23:1641 (Abs. 637.10).

Applicant claims a commercial package comprising means for determining the concentration of heme oxygenase-1 (HO-1) and/or a nucleotide sequence encoding HO-1, in bodily fluid or non-neural tissue obtained from a patient.

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Schipper HM et al. anticipate the claimed invention by Schipper HM et al. teach competitive ELISA (please note: an ELISA microwell container and/or test system constitutes a commercial package) was used to determine HO-1 protein levels in plasma and blood lymphocytes derived from subjects. Therefore, Schipper HM, et al. anticipate the instant claims above.

Please note that it is legally well established that printed matter-e.g., providing instruction to a known product, to show its intended use does not lend patentable distinction to the product, per se-i.e., a well known compound, packaged and labeled to show its new use, is not patentable (see, e.g., *In re Haller*, 73 USPQ 403). Therefore, the printed instructions showing intended use fail to lend patentable distinction to the claimed invention. Therefore, the cited reference above is deemed to anticipate the instant claims above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is (703) 305-0404. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196 or the Supervisory Patent Examiner, Brenda Brumback whose telephone number is (703) 306-3220.

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CHRISTOPHER R. TATE
PRIMARY EXAMINER